

Docket No.: 84804(303989)  
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:  
Joachim Luithle et al.

Application No.: 10/516,777

Confirmation No.: 5263

Filed: January 13, 2006

Art Unit: 1625

For: 2-HETEROARYL CARBOXAMIDES

Examiner: J. Mabry

DECLARATION PURSUANT TO 37 C.F.R. §1.132

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir/Madam:

I, the undersigned, William F. Gray, hereby declare as follows:

1. I am an Attorney of Record in the above-identified application for U.S. Patent. My registration number with the United States Patent and Trademark Office is 31,018.

2. On 08/24/2009, I received an E-mail from another Bayer attorney, Gary Coe, informing me that he had received a telephone call from Examiner Mabry, seeking Dr. Susan Pellegrino to inquire whether applicants had responded to a 12/23/2008 restriction requirement or would be abandoning this application. As Dr. Pellegrino had been the prosecuting attorney in the past but the responsibility for the case now rested with me, I answered that I would respond to the examiner's inquiry.

3. I made a thorough review of our hard copy, electronic data base, and electronic mail files in connection with the Application and found no record of the Restriction Requirement.

4. On August 25, 2009, I contacted Examiner J. Mabry by telephone. Examiner Mabry indicated that he was going to issue a Notice of Abandonment as no

response to the Restriction Requirement mailed December 23, 2008 had been received.

5. I informed the Examiner that we had no record of a Restriction Requirement having been received and that Applicants did not intend to abandon the application. I stated that the examiner could proceed to issue the Notice of Abandonment, as the application was in fact abandoned at the time of our discussion. I further informed the Examiner that we would revive the application upon receipt of the Notice of Abandonment.

6. On August 26, 2009, the Examiner mailed a Notice of Abandonment and an Examiner's Interview Summary which states that I "told the Examiner that Applicant did not send a Response because Applicant intends to abandon Application."

7. I believe that the Examiner's statement in the Interview Summary is based on the Examiner's misunderstanding of our discussion. As explained above, the statement is incorrect.

8. Applicant did not intend to abandon the Application. The abandonment was completely unintentional. As such, Applicants are submitting herewith a Petition to Revive under 37 CFR 1.137(b) for unintentional abandonment of the instant application.

9. I hereby further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both (18 U.S.C. 1001), and that such willful false statements may jeopardize the validity of the above-identified Application or any patent issued thereon.

Date: 10/13/2009

William F. Gray  
William F. Gray, Esq.